

IN THE UNITED STATES DISTRICT COURT

FILED-CLERK  
U.S. DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS 05 MAY -1 PM 4:00

SHERMAN DIVISION

TEXAS-EASTERN

JOHN PHILLIPS WILLIAMS

§

BY \_\_\_\_\_

VS.

§

CIVIL ACTION NO. 4:05cv227

RICK PERRY, ET AL.

§

MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff John Phillips Williams, an inmate confined at the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brought this civil rights suit pursuant to 42 U.S.C. § 1983 against Rick Perry, the Governor of the State of Texas; Bruce McFarland, District Judge of the 362nd State Judicial District Court for Denton County; and the justices of the Texas Court of Criminal Appeals.

The court referred this matter to the Honorable Don D. Bush, United States Magistrate Judge, at Sherman, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed as frivolous and for failure to state a claim upon which relief may be granted.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. Plaintiff filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and the applicable law. See FED. R. Civ. P. 72(b). After careful consideration, the court concludes Plaintiff's objections are without merit.<sup>1</sup>

In his objections, plaintiff states he is dismissing his claim that he was denied equal protection. As the defendants have not been served at this point, plaintiff's motion to dismiss the claim should be granted pursuant to FED. R. Civ. P. 41(a).

Plaintiff also requests that the court exercise supplemental jurisdiction over state law claims. In accordance with 28 U.S.C. § 1367(c), a district court may decline to exercise supplemental jurisdiction over a claim if the district court has dismissed all claims over which it has original jurisdiction. As this court is

---

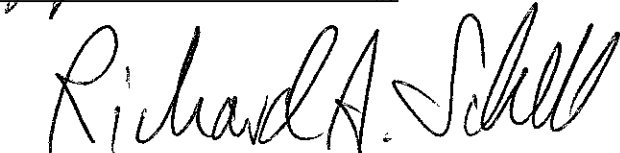
<sup>1</sup> Plaintiff filed an amended complaint (docket entry no. 7) and a motion for leave of court to amend his complaint with a second amendment (docket entry no. 8). Plaintiff's motions are granted. The amended complaints have been considered and do not change the analysis of the claims. Further, to the extent plaintiff challenges the validity of his conviction, plaintiff must bring such claims in a petition for writ of habeas corpus. The writ of habeas corpus is the appropriate federal remedy for a state prisoner challenging the fact of confinement. *Preiser v. Rodriguez*, 411 U.S. 475, 484, 93 S.Ct. 1827, 1833, 36 L.Ed.2d 439 (1973).

dismissing all claims over which it has original jurisdiction, supplemental jurisdiction will be declined.

O R D E R

Accordingly, Plaintiff's objections are **OVERRULED**. Plaintiff's claim that he was denied equal protection is **DISMISSED** at his request. The findings of fact and conclusions of law of the Magistrate Judge are correct and the reports of the Magistrate Judge are **ADOPTED**. The exercise of supplemental jurisdiction over the state law claim should be declined pursuant to 28 U.S.C § 1367(c). A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

SIGNED this 27<sup>th</sup> day of April, 2006.

A handwritten signature in cursive script, reading "Richard A. Schell".

RICHARD A. SCHELL  
UNITED STATES DISTRICT JUDGE